Supreme Court, U.S.
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No. 011327

In The

Supreme Court of the United States

J. LOREN BROOKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

CHARLES F. MOSES
Counsel of Record
MOSES LAW FIRM
P. O. Box 2533
Billings, Montana 59103
(406) 248-7702

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to justify the verdict in this case?

2. Whether the Public Authority Instruction as a theory of defense, should have been given by the Court?

3. Whether a Good Faith Instruction as a theory of defense should have been given by the Court?

4. Whether the Instructions on Reliance upon an an Attorney and a Certified Public Accountant were incomplete in that they did not set forth that the burden of persuasion was always on the government to prove the elements of the charge in Count I, beyond a reasonable doubt?

PARTIES TO THE PROCEEDING

The petitioner in this case is Mr. J. Loren Brooks, represented by his attorney Charles F. Moses of the Moses Law Firm.

The respondent in this criminal case is the United States of America represented by Mr. Kris A. McLean, Assistant United States Attorney and Mr. Leif M. Johnson, Assistant United States Attorney.

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INTRODUCTION

Petitioner respectfully petitions for a Writ of Certiorari to review the Judgment entered by the United States Court of Appeals for the Ninth Circuit in this proceeding.

The ruling below undermines the opportunity of the defendant, J. Loren Brooks, to present his theories of the case by appropriate instructions to guide the jury in its fair and impartial consideration of the evidence in this case, based upon the rules of law or standards required to be given by the Court in the administration of justice.

All circuits entitle a defendant to a theory of defense instruction if it is timely requested, supported by the evidence, and is accurate as to the law. *See, e.g., United States v. McQuarry*, 726 F.2d 401, 402 (8th Cir. 1984); *United States v. Swallow*, 109 F.3d 656 (10th Cir. 1997); *United States v. Parker*, 566 F.2d 1304 (5th Cir.), *cert. denied*, 435 U.S. 956 (1978). Where a defendant's theory is legally sound and supported by the evidence, it is reversible error *per se* for a Court to refuse a theory of defense instruction. *United States v. Sotelo-Murillo*, 887 F.2d 176 (9th Cir. 1989); *United States v. Mann*, 811 F.2d 495 (9th Cir. 1987). Again, defense counsel must request such an instruction in a timely fashion and in the appropriate form.

The evidence in this case was insufficient to establish beyond a reasonable doubt the guilt of Mr. Brooks as to Count I.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is unreported, but it is reprinted in the Appendix to this Petition ("Pet.App.") at 1a-3a. The Ninth Circuit's opinion affirmed a Judgment of the United States District Court for the District of Montana. The Ninth Circuit Court denied a timely filing of a Petition for Rehearing and suggestion of rehearing *en banc*. This Order of the Ninth Circuit Court is reprinted in the Appendix to this Petition ("Pet.App.") at 19a. This Order was entered on December 12, 2001.

STATEMENT OF JURISDICTION

The Court of Appeals for the Ninth Circuit denied rehearing and rejected the suggestion of rehearing *en banc* on December 12, 2001. Pet.App. 19a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides for due process of law before any person can be deprived of life, liberty or property. U.S. CONST. Amendment V.

STATEMENT OF THE CASE

The facts and circumstances of this criminal case can be set forth as follows:

A. The Factual Circumstances.

The defendant, J. Loren Brooks, was a successful rancher and breeder of livestock who was nationally known. In 1975, Mr. Brooks purchased approximately 12,000 deeded acres on the Crow Indian Reservation in Montana. In the course of his operation he also acquired approximately 20,000 leased acres, which were either office leases issued by the government or individual Indian competent leases and all for a five year term. Mr. Brooks' honesty and reputation, particularly in dealing with Indians, has never been challenged and at the time of trial Mr. Brooks was seventy-five years old.

B. The District Court Proceedings.

During the course of the ranching operations, Mr. Brooks had an operating loan with the Sheridan Bank of Sheridan, Wyoming. During the 1980's, there was a drought in the Western United States and hundreds of ranchers were in default on their operating loans. These loans were secured by mortgages of cattle and farm machinery. Because of Mr. Brooks' inability to make payments on the loan, a foreclosure action was instituted. The bank itself went bankrupt because of these severe economic conditions at that time, and the foreclosure was taken over by the FDIC. Mr. Brooks and his attorney, Harold Stanton, went to Denver, Colorado, to seek a resolution of the outstanding indebtedness and the foreclosure proceedings. Mr. Brooks and Attorney Harold Stanton were taken to a room where there were hundreds of other foreclosures pending for resolution. At that time, an appraisal of the security was made by the government

and the amount for settlement of the foreclosure was $550,000, which was the amount initiated by the government. To that extent, it was a unilateral decision by the government as to the amount due.

The defendant was unable to cover this amount by any loan with another bank and subsequently contacted Mr. Pat Goggins, owner and operator of the Billings Auction Yard, in Billings, Montana. Mr. Goggins was also the Publisher of the *Livestock Reporter*, a newspaper known nationwide with respect to cattle prices and trends. Mr. Goggins agreed to buy the livestock and machinery of Mr. Brooks by advancing the amount due to satisfy the $550,000 claim of the FDIC. Mr. Stanton was one of the attorneys involved, Mr. Goggins had his own attorney and, the government's attorney was also involved in the final settlement and resolution. Documents were prepared and executed by the parties and the claim of the FDIC was fully paid, satisfied and discharged. It should be noted that a business organization was created by Mr. Goggins known as the Reno Creek Cattle Company, and Gary Bishop was a participant in maintaining and caring for the cattle for sale.

At the time of the sale of the livestock, in the Fall, there was a windfall for Mr. Goggins and Mr. Bishop because of the quality of the cattle and the fact that the market had risen sharply. As a result of these proceedings and the documentation presented in Court, it is without contradiction that Mr. Brooks no longer had any cattle or farm machinery since 1987 to this day.

C. The Ninth Circuit Proceedings.

Because of economic conditions, Mr. Brooks was also delinquent on his real estate loan. Because of the severity of the problem a moratorium on all real estate loans was issued by the federal government which was lifted in 1989. Shortly thereafter, Mr. Brooks and his attorney, Harold Stanton, appeared at the offices of the FSA seeking to resolve this financial situation confronting Mr. Brooks. Appropriate appraisals were made of the land value by the government and it was agreed that the loan obligation was to be a total of $1,000,000, with an additional agreement that in the event of the subsequent sale of the property, the government would be entitled to one-half of the appreciated value.

Subsequently, Mr. Brooks was unable to meet the terms and conditions of the new loan and the government offered to take title to his real estate with leaseback provisions unilaterally to be determined by the government, which offer was respectfully declined. It should be noted at this time that since 1987, Mr. Bishop had acquired all of the office and competent leases and was the true owner of these leases and they were not mortgaged or liened to the government by Mr. Brooks.

In 1995, it became apparent that Mr. Brooks could not afford foreclosure and an agreement was entered into to sell the property for the total amount of $2,300,000. This agreement included the residence and real property of Mr. Gary Bishop and the 20,000 leased acres owned and paid for by Mr. Bishop. The government presented a witness which set forth the fact that it took six weeks for her to confirm the ownership of these leases since 1987.

Mr. Brooks and his son-in-law, Mr. Bishop had to agree on a proper and appropriate division of the proceeds of the sale representing their respective interest in the property sold. Mr. Stanton convened a conference attended by the Certified Public Accountant, and his notes reflect the agreed upon division of the proceeds of the sale by the sellers. Subsequently, there were appraisals of the value of the leases by Hall & Hall, qualified appraisers, which confirmed their value independently as agreed upon by all of the parties. The Lease Valuation Summary of Hall & Hall is reprinted in the Appendix to this Petition ("Pet.App.") at 20a.

It became obvious that payment under the Appreciation Agreement was not possible. Mr. Stanton individually contacted Mr. Hellyer of the Loan Resolution Trust for the federal government, who had explicit authority to resolve such claims. It was agreed that if Mr. Brooks paid the balance due on the mortgage, including principle and interest, the government would be satisfied with its claim and issue a satisfaction of mortgage. Mr. Stanton conveyed this information to both Mr. Brooks and Mr. Bishop and they clearly relied upon Mr. Stanton's understanding with Mr. Hellyer. At the time of the closing of this sale, Mr. Stanton was present, representatives of the FSA were present, and the buyer was present. The appropriate deeds were executed individually by Mr. Brooks and Mr. Bishop and the transfers and assignments of the leases were executed by Mr. Bishop. The FSA thereupon received the amount claimed under the mortgage and issued a Satisfaction of Claims against the property. This transaction was concluded on August 31, 1995.

Subsequently, Mr. Brooks was indicted and charged in Count I with Defrauding the FSA by concealing assets.

Count II as a significant feature, was an allegation that he owned several hundred head of cattle. Mr. Brooks was convicted of Count I and acquitted of the various charges in Count II. A copy of the Indictment is reprinted in the Appendix to this Petition ("Pet.App.") and marked at 4a-7a and a copy of the Judgment of the Court is reprinted in the Appendix to this Petition ("Pet.App.") and marked at 8a-18a.

Timely appeal was filed to the Ninth Circuit Court of Appeals, which subsequently affirmed the decision of the District Court for the State of Montana and denied any rehearing *en banc* on December 12, 2001. Pet.App. 19a.

REASONS FOR GRANTING THE WRIT

The fundamental rules or standards that govern the issues as set forth in this Petition can be set forth as follows:

I. THE GOVERNMENT IS REQUIRED TO PLEAD AND PROVE ITS CASE AS TO EACH ELEMENT BEYOND A REASONABLE DOUBT. IN THIS CASE, THE EVIDENCE WAS INSUFFICIENT TO JUSTIFY CONVICTION.

II. THE COURT MUST ISSUE APPROPRIATE INSTRUCTIONS TO ADVISE THE JURY AS TO HOW THEY SHOULD CONSIDER THE EVIDENCE BASED UPON THE APPROPRIATE RULE OF LAW.

III. THE DEFENDANT IS PERMITTED TO PRESENT EVIDENCE IN SUPPORT OF HIS DEFENSES.

IV. THE COURT MUST GRANT INSTRUCTIONS TO SET FORTH CLEARLY THE THEORY OR THEORIES OF THE DEFENSE, PROVIDED, HOWEVER, SUCH INSTRUCTION IS A CORRECT AND COMPLETE STATEMENT OF THE LAW AND THERE IS SOME EVIDENCE PRESENTED IN THE CASE TO SUSTAIN THE GIVING OF SUCH AN INSTRUCTION.

ARGUMENT

1. Public Authority Instruction.

The defendant submitted to the Court a Public Authority Instruction taken from the Federal Jury Instruction text authority. This instruction was rejected by the Court. Defendant's Offered Instruction No. 19 is reprinted in the Appendix to this Petition ("Pet.App.") at 21a.

The language of the instruction was appropriate and has not been challenged by the government in that respect.

The evidence presented by Mr. Stanton between he and Mr. Hellyer, who spoke for the Loan Resolution Trust, can be set forth in *haec verba* as follows:

If we would pay off the $1,470,000 (on the mortgage) he would be in a position to totally settle the claim against Mr. Brooks.

Mr. Hellyer reaffirmed the fact that the government would not receive anything for the Shared Appreciation Agreement, provided they would pay off the total amount of the mortgage as claimed by the government. This was discussed with the clients at the time, and particularly, how the Appreciation Agreement was going to be handled. There would be a complete settlement with the FSA including the Shared Appreciation Agreement. Both Mr. Brooks and Mr. Bishop relied upon the government's representation and the sale was completed on August 31, 1995. The money was paid over to the FSA, as agreed, in the amount of $1,472,000. The Satisfaction of Claim of FSA was received and filed.

The government has never challenged, denied, or disputed this testimony.

At the Sentencing Hearing dated December 15, 2000, the Presiding Judge stated as follows: "I do feel that you relied on your attorney and that your attorney relied on statements made by the government."

In summary, the government said "go ahead with the sale" and the payment to the FSA in the amount set forth will satisfy the appreciation agreement.

See, the following cases:

Sec. 19.04 Instruction For Federal Criminal Cases;

United States v. Howell, 37 F.3d 1197 (7th Cir. 1994);

United States v. Hedges, 912 F.2d 1397 (11th Cir. 1990);

United States v. Tallmadge, 829 F.2d 767 (9th Cir. 1987);

United States v. Barker, 546 F.2d 940 (D.C. Cir. 1976).

This instruction applies to the conduct of the government in this case and justifies reliance upon the agreement between Mr. Hellyer and Mr. Stanton.

2. Good Faith.

The Court refused to submit to the jury, an instruction with respect to the defense of good faith. The government has not challenged the form of the instruction or its completeness. Offered Instruction No. 22 is reprinted in the Appendix to this Petition ("Pet.App.") at 22a.

The Ninth Circuit relies upon *United States v. Lorenzo*, 995 F.2d 1448, 1455 (9th Cir.1993), rejecting a good faith instruction as applied to 18 U.S.C. § 1001 and rejects *Cheek v. United States of America*, 498 U.S. 192, 112 L.Ed.2d 617, 111 S.Ct. 604 (1991) as not applicable. A specific intent instruction evidently obviates any need for a good faith instruction. The net effect of this case is to eliminate

a good faith defense and particularize the same only to tax proceedings.

There is a division of authority among the Circuits. In *United States v. Haddock*, 956 F.2d 1534 (C.A.10, Kan. 1992) the Court established that good faith is a legitimate theory of defense. A similar argument was made by the prosecution asserting that specific instructions given on willfulness and intent to injure or defraud, sufficiently conveyed the essence of the good faith intent to the jury. The Court held "that the general instructions on wilfulness and intent are insufficient to fully and clearly convey a defendant's good faith defense to the jury." (Citing cases) In *United States v. Casperson*, 773 F.2d 216 (C.A. 8 S.D. 1985), it was stated "that fraudulent intent is an essential element of crimes for which appellants were convicted. Good faith constitutes a complete defense to a specific intent crime . . . It is well established that defendants are entitled to a theory of defense instruction if a timely request is made and the evidence supports the proffered instruction and the instruction correctly states the law." (Citing cases.)

In the case at bar, the evidence shows very clearly that Mr. Brooks had always relied upon his attorney who participated in every transaction, relied upon his accountant and other persons and particularly, relied upon the evaluation of the leases by Hall & Hall. Pet.App. 20a. There was substantial evidence of Mr. Brooks' good faith.

This instruction was presented with respect to the conduct of Mr. Brooks. *See* also, *Cheek v. United States*, 498 U.S. 192, 112 L.Ed.2d 617, 111 S.Ct. 604 (1991) and *United States v. Murdock*, 290 U.S. 389, 54 S.Ct. 223, 78 L.Ed. 381 (1933).

3. Reliance Upon Attorneys and Certified Public Accountants

In this case, the Court gave instructions as to reliance on attorneys and certified public accountants who had represented Mr. Brooks for many years. The Court however, removed from the jury's consideration, a paragraph in the proffered instruction which reads as follows:

> "You are reminded that the government is required to prove all the elements of the offense including the element of intent and willfulness and that the defendant need only raise a doubt as to this issue to be entitled to an acquittal. In other words, the burden of proof does not shift to the defendant, but always remains with the government to prove willfulness beyond a reasonable doubt."

Defendant's Offered Instructions No. 21 and 22 are reprinted in the Appendix to this Petition ("Pet.App.") at 22a-23a.

The instructions given by the Court are incomplete and misleading. It may be that the defendant has the "burden of production" to justify such instruction. However, the "burden of persuasion" remains with the government and the defendant need only raise a reasonable doubt to justify an acquittal.

Cases in support of our position are *Sandstrom v. State of Montana*, 442 U.S. 510, 61 L.Ed.2d 39, 99 S.Ct. 2450; *Mullaney v. Wilbur*, 421 U.S. 684, 44 L.Ed.2d 508, 95 S.Ct. 1881 (1975) and *In re Winship*, 397 U.S. 358, 25 L.Ed.2d

368, 90 S.Ct. 1068 (1970), and *Patterson v. New York*, 432 U.S. 197, 53 L.Ed.2d 281, 97 S.Ct. 2319 (1977).

4. Sufficiency of the Evidence.

A. An issue to be presented to the Court for consideration is the sufficiency of the evidence. As to Count I, this specifically involves a determination of Mr. Bishop's interest in the proceeds from the sale of his property. As shown by the handwritten notes of Mr. Stanton which are reprinted in the Appendix to this Petition ("Pet.App.") at 25a, the parties, together with others, gathered July 25, 1995 to resolve this issue. The calculation agreed upon was as follows:

1. Gary's House $225,000.
2. 270 acres at $81,000.
3. Value of Gary's leases $490,000.
4. Prepaid leases $32,000.

Total to Gary $828,000.

The FSA was notified on August 28, 1995 of these calculations.

B. The Circuit Court of Appeals, in affirming the decision, Pet.App. 1a-3a, stated the following:

1. The testimony from one of Brooks' former employees showed that Brooks owned many of the cattle that Brooks attributed to Mr. Bishop. Mr. Brooks was acquitted of this charge of owning cattle as set forth in Count II. Each Count is an independent charge and evidence as to one count cannot be used as a basis for proof

of another count. Ownership of cattle was irrelevant as to Count I.

2. The suggestion was made in the Circuit Court opinion that Mr. Brooks overvalued Indian leases that were attributed to Mr. Bishop. The record at the Bureau of Indian Affairs, and the individual competent leases, prove that Mr. Bishop had owned all of these leases since 1987, for approximately eight years. Mr. Bishop paid for these leases, operated exclusively on these leases, owned the leases and executed the transfer of these leases to the buyer, after six weeks of examination confirmed by the witness for the government.

3. Mr. Brooks never had any interest in the leases since 1987 and this was reflected by the testimony of the certified public accountant, the bank records produced by the government, the tax returns and these documents establish this fact without dispute.

4. The Circuit Court of Appeals states that Mr. Brooks overvalued these leases and there was no testimony by the government as to the value of these leases. We are not talking about a conspiracy by the parties on July 25, 1995. Hall & Hall Appraisers testified on behalf of the defendant as to the value of these leases. Accordingly, the statement that the leases were overvalued was not based upon any evidence presented by the government as to what they might contend was the actual value of the leases.

5. Mr. Brooks never received any funds from Mr. Bishop's share of the proceeds of the sale up to and including the present time. It is uncontradicted that the lease rentals were $50,000 per year (paid for exclusively

by Mr. Bishop) and for the government to say there was no value is totally inappropriate.

6. The Circuit Court suggested that Mr. Bishop's estimate of the worth of his house and property was more than its appraised value. This is totally erroneous. Evidence produced by the government established that their figures represented the assessed value to the County for tax purposes, not the market value of his residence and his adjacent real estate. This valuation could not represent the market value of the property.

Accordingly, it is submitted that the opinion of the Circuit Court of Appeals is not only erroneous, but cannot be supported by any competent evidence for its conclusions.

CONCLUSION

Let me suggest the following as if the prosecutor is speaking:

The Prosecutor Speaks:

> "Members of the jury, defense counsel is simply presenting 'a smoke screen' in your consideration of the case. There is no defense presented as an issue in this case with respect to and agreement by public authority authorizing the sale to defeat willfulness. You will search in vain for any instruction that advises you of this defense as an issue in the case.
>
> Furthermore, good faith is not an issue in this case. There is no instruction that is given as to this theory of defense.

> Finally, reliance upon an attorney or certified public accountant consistent with the instruction given by the Court, has not been proven by the defendant in this case. He has utterly failed to prove this defense. The defendant has simply not proven his case as to reliance in this respect.
>
> Finally, members of the jury, the evidence is clearly sufficient in this case as to Count I, since the government believes he overvalued the leases, believes he had an interest in the cattle and despite the fact there is no appraisal by the government, the appraisals of Hall & Hall and the various persons who testified for the defendant is not to be believed. It is all a sham."

Petitioner respectfully requests that the decision of the Ninth Circuit Court be summarily reversed in this case. In the alternative, the Petition for Writ of Certiorari should be granted and the case set for plenary review on the merits.

Respectfully submitted,

CHARLES F. MOSES
Counsel of Record
MOSES LAW FIRM
P.O. Box 2533
Billings, Montana 59103
(406) 248-7702

Attorneys for Petitioner

March, 2002

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. J. LOREN BROOKS, Defendant-Appellant.	No. 01-30005 D.C. No. CR-99-00085-JDS MEMORANDUM* (Filed Oct. 31, 2001)

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted September 14, 2001**
Seattle, Washington

Before: KOZINSKI and GOULD, Circuit Judges, and SCHWARZER,*** Senior District Judge.

Brooks appeals his conviction for concealing a material fact on a matter within the jurisdiction of the United States Department of Agriculture. 18 U.S.C. § 1001(a)(1).

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by the Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

He argues that there is insufficient evidence to support his conviction.[1] "We review sufficiency of evidence challenges to determine whether viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Herrera-Gonzalez*, 263 F.3d 1092, 1095 (9th Cir. 2001) (citations and internal quotation marks omitted). We affirm.

The government charged that Brooks violated 18 U.S.C. § 1001(a)(1) when, in a letter to the Farm Services Administration (FSA), he misrepresented the value of the ranch he sold and the proportions of the total sale price attributable to Brooks and to his son-in-law, Bishop.

Section 1001(a)(1) provides in pertinent part that

> [W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –
>
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
>
> . . .
>
> shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 1001(a)(1) (2001); *see also Bryson v. United States*, 396 U.S. 64 (1969).

---

[1] Brooks also argues that the district court erred in rejecting his proffered jury instructions as to reliance and good faith. We reject that argument. *See United States v. Lorenzo*, 995 F.2d 1448, 1455 (9th Cir. 1993) (stating that "18 U.S.C. § 1001 does not ordinarily invite the use of a good faith instruction").

Brooks challenges the sufficiency of the evidence to prove that he violated § 1001(a)(1) by concealing a material fact. A fact is material under 18 U.S.C. § 1001(a)(1) if it is "*capable* of influencing or affecting a federal agency." *United States v. Service Deli, Inc.*, 151 F.3d 938, 941 (9th Cir. 1998) (emphasis in original).

There was sufficient evidence that Brooks' apportionment of the sale price of his ranch between himself and Bishop misrepresented the values of their respective contribution. Testimony from one of Brooks' former employees showed that Brooks owned many of the cattle that Brooks attributed to Bishop. Other testimony supported that Brooks overvalued Indian leases that were included in the sale and attributed to Bishop. Other evidence suggested that Brooks' estimate of the worth of Bishop's house was much more than its appraised value. There was also evidence that the FSA relied on Brooks' letter in deciding to release Brooks from further liability on his debts to the FSA.

A rational jury could determine, based on that evidence, that Brooks knowingly concealed a material fact (*i.e.*, his portion of the sale price of the ranch) from the FSA.

AFFIRMED.

KRIS A. MCLEAN
Assistant U.S. Attorney
P.O. Box 8329
Missoula, Montana 59807
406-542-8851

ATTORNEY FOR THE UNITED STATES

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. J. LOREN BROOKS, Defendant.	CR 99-85-BLG-JDS COUNT I, V 18 U.S.C. §1001(a)(1) 5 years imprisonment and/or $250,000 fine COUNT II, III, IV 18 U.S.C. §1001(a)(2) 5 years imprisonment and/or $250,000 fine

INDICTMENT

(Filed Aug. 20, 1999)

THE GRAND JURY CHARGES:

COUNT I

That on or about August 28, 1995 at Hardin, within the State and District of Montana, the defendant J. LOREN BROOKS in a matter within the jurisdiction of

the United States Department of Agriculture, Farm Services Administration, did knowingly and willfully cause a material fact to be concealed from the Farm Service Administration, specifically, the defendant J. LOREN BROOKS in connection with the sale of the Brooks Ranch to Royal Crest Dairy, Inc., represented that Gary R. Bishop should receive $828,000 as the value of real estate sold by Bishop in the transaction, and that J. LOREN BROOKS should receive approximately $1,400,000 as the value of real estate sold by J. LOREN BROOKS in the transaction, when in truth and in fact as J. LOREN BROOKS then well knew the true value of the real estate Bishop sold in said transaction was only approximately $160,000.00, and the true value of the real estate BROOKS sold in the transaction was approximately $2,140,000, in violation of 18 U.S.C. §1001(a)(1).

COUNT II

That on or about December 11, 1995, at Hardin, within the State and District of Montana, the defendant J. LOREN BROOKS did knowingly and willfully in a manner within the jurisdiction of the United States Department of Agriculture, Farm Services Administration make a material, false, fictitious or fraudulent statement or representation on a United States Department of Agriculture, Farmers Home Administration Application for Settlement of Indebtedness Form 1956-1, by representing that his estimated gross income for 1996 was $6,849.40 in Social Security payments, when in truth and in fact as the defendant J. LOREN BROOKS then well knew he would receive substantially more income during 1996 in violation of 18 U.S.C. §1001(a)(2).

COUNT III

That on or about December 11, 1995, at Hardin, within the State and District of Montana, the defendant, J. LOREN BROOKS did knowingly and willfully in a manner within the jurisdiction of the United States Department of Agriculture, Farm Services Administration make a material, false, fictitious or fraudulent statement or representation by indicating that his estimated gross income for 1995 was $56,000 in "Rental" payments, when in truth and in fact as J. LOREN BROOKS then well knew, he would receive substantially more income during 1995, in violation of 18 U.S.C. §1001(a)(2).

COUNT IV

That on or about December 11, 1995, at Hardin, within the State and District of Montana, the defendant, J. LOREN BROOKS did knowingly and willfully in a manner within the jurisdiction of the United States Department of Agriculture, Farm Services Administration make a material, false, fictitious or fraudulent statement or representation by indicating that he had no farm or business operating expenses for 1996 when in truth and in fact, as J. LOREN BROOKS then well knew, he would have farm or business operating expenses during 1996, in violation of 18 U.S.C. §1001(a)(2).

COUNT V

That on or about December 11, 1995 at Hardin, within the State and District of Montana, the defendant, J. LOREN BROOKS in a matter within the jurisdiction of

the United States Department of Agriculture, Farm Services Administration, did knowingly and willfully cause a material fact to be concealed from the United States Department of Agriculture, Farm Services Administration on an Application for Settlement of Indebtedness Form 1956-1 by listing no ownership interest in "livestock to be sold" when in truth and in fact as J. LOREN BROOKS well knew, he had an ownership interest in several hundred head of cattle to be sold, in violation of 18 U.S.C. §1001(a)(1).

A TRUE BILL.

/s/ Gary Bowman
FOREPERSON

/s/ Carl E. Rostad
UNITED STATES ATTORNEY
FOR THE DISTRICT
OF MONTANA

UNITED STATES DISTRICT COURT

_____ District of Montana, Billings Division

UNITED STATES
OF AMERICA
V.

J. LOREN BROOKS

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number:
CR 99-85-BLG-JDS-01

Timer Moses
Defendant's Attorney

THE DEFENDANT:

[ ] pleaded guilty to count(s) _____

[ ] pleaded nolo contendere to count(s) _____ which was accepted by the court.

[X] was found guilty on count(s) 1 after a plea of not guilty.

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:1001(a)(1)	Concealing information from the Department of Agriculture	8/28/95	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

[X] The defendant has been found not guilty on count(s) 2

[ ] Count(s)_____ [ ] is [ ] are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 501-36-3747

Defendant's Date of Birth: 10-2-25

Defendant's USM No.: 06305-046

Defendant's Residence Address:
813 N. Cody
Hardin, MT 59034

Defendant's Mailing Address:

December 15, 2000
Date of Imposition of Judgment

/s/ Jack D. Shanstrom
Signature of Judicial Officer

Jack D. Shanstrom
Chief Judge
Name and Title of Judicial Officer

December 19, 2000
Date

PROBATION

The defendant is hereby sentenced to probation for a term of 5 years.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

[X] The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

[X] The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere

and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL STANDARD CONDITIONS OF SUPERVISION

As a condition of probation, defendant shall be confined to his home, as directed by the U.S. Probation Office, and shall be electronically monitored for a period of six (6) months. Defendant shall be released from home confinement on a schedule approved by the U.S. Probation Office.

Defendant will provide the U.S. Probation Office with any requested financial information and will not incur new lines of credit without the prior approval of the probation officer.

Defendant shall pay the restitution ordered by the Court.

The mandatory drug testing requirement is suspended by the Court due to the low risk of drug use by the defendant.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$181,317.86

[ ] The determination of restitution is deferred until ___. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

[X] The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
U.S. Department of Agriculture		$181,317.86	
Totals	$_____	$181,317.86	

[ ] If applicable, restitution amount ordered pursuant to plea agreement $_____

[ ] The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

[X] The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

[X] the interest requirement is waived for the
[ ] fine and/or
[X] restitution.

[ ] the interest requirements for the

[ ] fine and/or
[ ] restitution is modified as follows:

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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A. [X] Lump sum payment of $100.00 due immediately, balance due

[ ] not later than _____, or
[ ] in accordance with [ ] C, [ ] D, or [ ] E below; or

B. [ ] Payment to begin immediately (may be combined with [ ] C, [ ] D, or [ ] E below); or

C. [ ] Payment in ___ (e.g., equal, weekly, monthly, quarterly) installments of $_____ over a period of ___ (e.g., months or years), to commence ___ (e.g., 30 or 60 days) after the date of this judgment; or

D. [ ] Payment in ___ (e.g., equal, weekly, monthly, quarterly) installments of $_____ over a period of ___ (e.g., months or years), to commence ___ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E [X] Special instructions regarding the payment of criminal monetary penalties: Restitution shall be paid in accordance with a schedule determined by the U.S. Probation Office. No interest shall be paid on the restitution amount. Payments shall be made by cashier's check or money order to the Clerk, U.S. District Court, Federal Bldg., 316 North 26th Street, Room 5405, Billings, MT 59101, for distribution to the payee.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a

period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

[ ] Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

[ ] The defendant shall pay the cost of prosecution.

[ ] The defendant shall pay the following court cost(s):

[ ] The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

STATEMENT OF REASONS

[X] The court adopts the factual findings and guideline application in the presentence report.

OR

[ ] The court adopts the factual findings and guideline application in the presentence report, except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 16
Criminal History Category: I
Imprisonment Range: 21 to 27 months
Supervised Release Range: 2 to 3 years
Fine Range: $5,000 to $50,000

[X] Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: $181,317.86

[ ] Discretionary restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(a)(B)(ii) (or in offenses committed before April 23, 1996, pursuant to 18 U.S.C. § 3663(d)).

[ ] Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because the number of identifiable victims is so large as to make restitution impracticable, pursuant to 18 U.S.C. § 3663A(c)(3)(A).

[ ] Restitution pursuant to the mandatory victim restitution provisions is not ordered in this title 18 property offense because determining complex issues of fact and related to the cause of amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process, pursuant to 18 U.S.C. § 3663A(c)(3)(B).

[ ] For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total

amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

[ ] Partial restitution is ordered, pursuant to 18 U.S.C. § 3553(c), for the following reason(s):

STATEMENT OF REASONS

[ ] this sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

OR

[ ] The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons:

OR

[X] The sentence departs from the guideline range:

[ ] upon motion of the government, as a result of a defendant's substantial assistance, or

[X] for the following specific reason(s): Aberrant behavior – USSG, Chapter 1, Part A(4)(d)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. J. LOREN BROOKS, Defendant-Appellant.	No. 01-30005 D.C. No. CR-99-00085-JDS ORDER (Filed Dec. 12, 2001)

Before: KOZINSKI and GOULD, Circuit Judges, and SCHWARZER,* Senior District Judge.

The Petition for Rehearing is DENIED.

The full court has been advised of the Petition for Rehearing En Banc and no judge of the court has requested a vote on the Petition for Rehearing En Banc. Fed. R. App. P. 35. Appellant's Petition for Rehearing En Banc is also DENIED.

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* The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

Lease Valuation Summary

BEST AVAILABLE COPY

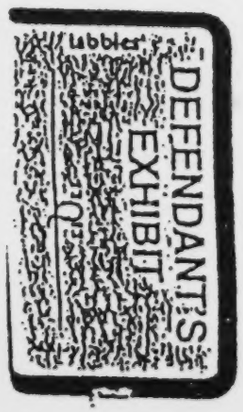
The following chart illustrates an estimated range of value for the subject leasehold based on the extremes of indicated carrying capacities demonstrated by the various BLM and State of Montana grazing leases previously summarized.

		BLM				STATE			
Leased Rangeland		Ac/AUM	AUMs	$/AUM	Amount	Ac/AUM	AUMs	$/AUM	Amount
20,010.56 Acres	High	2.66	7,523	$50	$376,138	2.53	7,909	$70	$553,652
20,010.56 Acres	Low	12.09	1,655	$50	$82,750	5.33	3,754	$59	$221,486

	LOW	HIGH
Range of Value (Leased Rangeland)	$82,750	$553,652
*Additional Leasehold Value:	$124,856	$124,856
Indicated Leasehold Value:	$207,606	$678,508

* Value includes Hall and Hall's December 1997 estimates of additional value for leased dry farmland and superior amenities associated with certain portions of the Indian Leases and for the State of Montana Lease used in conjunction with the Indian Leases. Note: These estimates do not include any value for prepaid rentals related to the Indian leases.

The following calculations represent value indications for the subject leasehold based on Hall and Hall's estimated carrying capacity of 3.0 acres per AUM, and on the weighted average values for leased AUMs derived from the sale data presented in the Lease Valuation Summary. The "Additional Leasehold Value" remains unchanged from the illustration above.



Leased Rangeland		Ac/AUM	AUMs	$/AUM	Amount	Addn'l Value	Value Indication
20,010.56 Acres	BLM	3.00	6,670	$50	$333,500	$124,856	$458,356
20,010.56 Acres	ST	3.00	6,670	$56	$373,520	$124,856	$498,376
20,010.56 Acres	Comb.	3.00	6,670	$53	$353,510	$124,856	$478,366
Hall & Hall Estimate							
20,010.56 Acres		3.00	6,670	$55	$366,860	$124,856	$491,716

INSTRUCTION NO. ___

You are instructed that a defendant who acts in reliance on public authority does not act knowingly or willfully and should be found not guilty.

A defendant acts under public authority if:

(1) that defendant is affirmatively told that his conduct would be lawful;

(2) the defendant is told this by an official of the United States government; and

(3) the defendant actually relies on what the official tells him in taking the action; and

(4) the defendant's reliance on what he was told by the official is reasonable in light of the circumstances.

In considering whether a defendant actually relied on representations by an official that his conduct was lawful, you should consider all of the circumstances of their discussion, including the identity of the official, the point of law discussed, the nature of what the defendant told, and was told by, the official, and whether that reliance was reasonable.

Sec. 19.04 Instructions For Federal Criminal Cases
United States v. Howell, 37 F.3d 1197
United States v. Hedges, 912 F.2d 1397
United States v. Tallmadge, 829 F.2d 767 (9th Cir. 1987)

DEFENDANT'S OFFERED INSTRUCTION NO. 19

INSTRUCTION NO. ___

You are instructed that if the defendant J. Loren Brooks in this case, acted in good faith upon his belief of the factual circumstances presented to him whether such belief was reasonable or unreasonable it defeats willfulness and your verdict should be "not guilty".

Cheek v. U.S., 498 U.S. 192, 112 L.Ed.2d 617, 111 S.Ct. 604 (1991)
U.S. v. Murdock, 290 U.S. 389, 76 L.Ed. 381, 54 S.Ct. 223 (1933)

DEFENDANT'S OFFERED INSTRUCTION NO. 22

INSTRUCTION NO. ___

You are instructed that the defendant may rebut the governments proof of willfulness by establishing good faith reliance on a qualified accountant after a full disclosure of financial information to such accountant.

The defendant must consult the accountant for the purpose of securing advice on the lawfulness of his conduct and make a full and accurate report to the accountant of all material facts of which he had the means of knowledge and then act strictly in accordance with such advice given by that accountant.

Advice of an accountant, does not constitute a complete defense but is a circumstance with respect to the fact that no willfulness was intended in this case.

You are reminded that the government is required to prove all the elements of the offense including the element of intent and willfulness and that defendant need only raise a doubt as to this issue to be entitled to an acquittal. In other words, the burden of proof does not shift to the defendant, but always remains with the government to prove willfulness beyond a reasonable doubt.

United States v. Claiborne, 765 F.2d 784 (9th Cir. 1985)

DEFENDANT'S OFFERED INSTRUCTION NO. 21

INSTRUCTION NO. ___

You are instructed that the defendant J. Loren Brooks would not be acting willfully if, before taking any action with regard to the alleged offense, he consulted in good faith, an attorney whom he considered competent and for the purpose of securing advice and made a full and accurate report to that attorney of all material facts of which he had the means of knowledge and then acted strictly in accordance with the advice given to him by that attorney.

Advice of counsel however, does not however constitute a complete defense but is a circumstance with respect to the fact that no willfulness was intended in this case.

You are reminded that the government is required to prove all the elements of the offense including the elements of intent and willfulness and that defendant need only raise a doubt as to this issue to be entitled to an acquittal. In other words, the burden of proof does not

shift to the defendant, but always remains with the government to prove willfulness beyond a reasonable doubt.

United States v. Tallmadge, 829 F.2d 767 (9th Cir. 1987)
United States v. Miller, 658 F.2d 235
Higs v. United States, 915 F.2d 287 (7th Cir. 1990)
United States v. Lindo, 18 F.2d 353 (6th Cir. 1994)

DEFENDANT'S OFFERED INSTRUCTION NO. 20

July 25 - 1995

8 Lots Today

J. LOREN BROOKS
DAVE REISIG
Hrs
GARY BISHOP
VICKI BISHOP

25a

To GARY-VICKI - 32 Ac + house $225,000.00 XX

Met RBBp - met with Bob Murray —

July 25 - 1995

BOB MURRAY
FAX Phone

Gary:
1. GARY'S House $225,000.00
2. Buy Gary & Vicki 270.8 Ac $81,000.00
3. Sell Dairy Land Lease for 1700 ± A @ $70/A. $490,000.00
4. Paid up lease rental $32,000.00

5 16
5 80
10 96
11 20

To Gary — $828,000.00

Separate Contract
Ck # 1021 - Paypt in title K —